SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-1388

THE PEOPLE EX REL. WILLIAM J. SCOTT,
ATTORNEY GENERAL,

Respondent,

vs.

JOHN A. GRIVETTI, ET AL.,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT.

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PETITION FOR WRIT OF CERTIORARI.

Pursuant to Supreme Court Rule 19, the City of Evanston, the Villages of Arlington Heights, Oak Park, and Skokie, and certain residents and electors of these Illinois municipalities, and John A. Grivetti, a citizen and elector of the State of Illinois, who were respondents in an original petition for declaratory judgment in the Illinois Supreme Court, file this petition for writ of certiorari to review the final judgment of that court.

OPINION BELOW.

The opinion of the Illinois Supreme Court appears in 50 Ill. 2d 156, and is appended to this petition.

GROUNDS ON WHICH JURISDICTION OF SUPREME COURT IS INVOKED.

The judgment sought to be reviewed herein was announced December 10, 1971. The opinion was filed December 17, 1971. It was modified on denial of rehearing January 27, 1972.

The statutory provision which confers on this Court jurisdiction to review the judgment in question by writ of certiorari is Section 1257 of Title 28 of the United States Code.

QUESTIONS PRESENTED FOR REVIEW.

The questions presented for review are:

1. Does the equal protection clause of the Fourteenth Amendment to the Constitution of the United States entitle State voters to elect members of the General Assembly from districts which are compact and contiguous, as well as equal in population, when the State Constitution requires districts to be so constituted?

2. Were the legislative districts adopted by the Illinois Supreme Court in violation of the Fourteenth Amendment to the United States Constitution?

3. Do gerrymandered legislative districts, which totally ignore traditional political boundary lines and discriminate against voters within certain municipalities, deny equal protection of the laws?

4. Is discrimination against classes of voters unlawful only when of a racial or partisan political nature?

5. Were respondents entitled to present evidence on questions of population and configuration of districts?

CONSTITUTIONAL PROVISIONS INVOLVED.

This case involves the provisions of Section 3 of Article IV of the Illinois Constitution of 1970, dealing with legislative redistricting. That section reads as follows:

§ 3. Legislative Redistricting.

(a) Legislative Districts shall be compact, contiguous and substantially equal in population.

(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts.

If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.

The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.

The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

Also involved are the provisions of Section One of the Fourteenth Amendment to the Constitution of the United States. Said section provides as follows:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE.

This case is an original petition for declaratory judgment brought in the Supreme Court of Illinois, purportedly under the provisions of Section 3 of Article IV of the Illinois Constitution, giving the Supreme Court original and exclusive jurisdiction of actions concerning redistricting the House and Senate which shall be initiated in the name of the People of the State by the Attorney General. The original petition brought in the name of the People was filed by two attorneys who asked that they be appointed as attorney relators for the people.

The original pleadings made the Illinois Secretary of State and members of the State Electoral Board respondents. Also included as respondents were the Villages of Arlington Heights, Oak Park, and Skokie, and the City

of Evanston, together with the individual aldermen and trustees of those municipalities. The Independent Voters of Illinois and certain other individuals were also made respondents. The municipalities, the individuals, and the Independent Voters of Illinois were plaintiffs in suits then pending in the Federal District Court challenging the reapportionment of the State Legislature under the 1970 Constitution. Evanston has a population of approximately 80,000 people. The three villages each have populations in excess of 70,000. (A. 19)

The prayer of the petition for declaratory judgment was that the Court find that Section 3 of Article IV of the Illinois Constitution was valid and that the redistricting plan approved and filed on August 7, 1971 was valid. Attached to the petition for declaratory judgment were copies of all pleadings then filed in the Federal District Court. (A. 24)

The Illinois Supreme Court then ordered the realignment of the parties; the Attorney General became the relator in the name of the People; and the original petitioners were made respondents, as were the various municipalities, State officials and individual citizens.

The case arose out of the attempt to redistrict the General Assembly of the State of Illinois pursuant to the provisions of Section 3 of Article IV of the 1970 Constitution. That section provides that the General Assembly shall redistrict the State legislative districts in the year after the federal decennial census year. The legislative districts are to be compact, contiguous and substantially equal in population. If no redistricting plan becomes effective by June 30 of that year, a legislative redistricting commission shall be constituted not later than July 10. Not later than August 10, the commission shall file with the Secretary of State a redistricting plan approved by at least five members.

The General Assembly failed to redistrict and the legislative commission was appointed. On August 7, 1971, the

Redistricting Commission filed a plan. It is the contention of the respondents herein that the purported redistricting plan was void and invalid in that it provided for districts which were not equal in population and the plan did not consist of compact and contiguous districts as required by the Constitution of the State of Illinois, and that the proposed districts did not give consideration to traditional and existing political boundary lines.

Six suits were filed in the Federal District Court prior to the action in the Illinois Supreme Court, in which the various respondents challenged the constitutionality of the proposed redistricting plan. The cases were consolidated and heard by a three judge panel. An opinion was rendered in that case on December 10, 1971, in which the three judge panel held that the redistricting plan, as finally amended after August 10, did not violate the Federal Constitution. It held that the only federal question the three judge panel would consider was the question of one man-one vote, and held the Illinois Legislative Redistricting Commission's plan to be federally constitutional.

An appeal from the decision of the three judge panel is pending before this Court under case number 71-1156.

On the same day that the Federal Court decision was announced, the Supreme Court of Illinois in this cause announced its decision which was released simultaneously with the opinion of the three judge Federal Court.

The municipalities and the individual citizens who are also the elected officers of those municipalities were made respondents in the Illinois Supreme Court by virtue of initiating the actions in the Federal Court. As a result of the redistricting, the municipalities have been totally fragmented with respect to the legislative districts in which they are located. The Village of Arlington Heights, for example, is divided into four districts. The Villages of Oak Park and Skokie are divided into three districts, and

the City of Evanston is divided into two legislative districts.

In filing their answer to the petition for declaratory judgment, the Village of Oak Park and the City of Evanston appended a map indicating and odd, misshapen and gerrymandered character of the legislative districts. They also pointed out that there was substantial discrepancy in the population of the districts. District 1, as described in the redistricting plan, had 188,373 people; District 2 had 185,507; District 3 had 224,363; District 4 had 189,022; and District 11 had 188,035 people. Appended to this petition is a copy of the map filed with the answer showing the shape and character of the gerrymandered districts. (A. 36) Similar allegations of fact were made in the federal cases.

As a result of the issues raised in the Federal Court and the answers filed in the Illinois Supreme Court, the Legislative Redistricting Commission purported to reconvene and change the plan and the population figures. The Commission attempted to correct the plan and the population figures on November 5, 1971, notwithstanding the fact that, under the Illinois Constitution, the Commission was required to report by August 10 and the Commission as then constituted had no lawful authority to act after August 10.

Oral argument based solely on the pleadings was held on November 9, 1971. On November 17, 1971, there was filed with the Secretary of State a purported list of population figures for the legislative districts. On November 23, 1971, the attorney for the Redistricting Commission appeared in the Federal Court and advised the Court that district maps previously circulated by the Secretary of State were erroneous and that new maps had been prepared by the Highway Department. (A. 52-A. 53) On November 24, the municipalities and the individual respondents filed a motion with the Illinois Supreme Court asking

for a hearing on the accuracy of the maps and population figures. (A. 50) No hearing was ever held and the Supreme Court never took evidence in this cause.

The Illinois Supreme Court apparently adopted the plan as purportedly revised by the Commission in November. This plan, even as revised, while apparently meeting the requirement of equality in population, totally ignores the Illinois constitutional requirement of compactness and contiguity. As part of the record in the Illinois Supreme Court, there appear the final maps as revised by the Secretary of State. The Illinois Supreme Court concluded that the plan contained "reasonably compact and contiguous legislative districts and is not violative of section 3(a) of Article IV of the Constitution." It noted that not all of the legislative districts were perfectly compact and that some legislative districts were more physically compact than others. The Court held that the redistricting plan as corrected by the Legislative Redistricting Commission on November 5, 1971 was not violative of any Federal or State constitutional requirements and adopted that plan as a provision redistricting plan for the election of members of the General Assembly in 1972. The Court however held that the Legislative Redistricting Commission itself had been illegally constituted and directed that a redistricting plan for subsequent elections shall be adopted pursuant to the procedures outlined in Section 3 of Article IV of the 1970 Constitution.

As indicated, this cause was an original proceeding in the Illinois Supreme Court. No evidentiary hearings were held, despite the request for such by the respondents. The federal questions were therefore raised by the various pleadings filed and in the opinion of the Illinois Supreme Court.

The first federal questions were raised in the petition for declaratory judgment which initiated this action.

The petition referred to the then pending cases in the Federal Court where claims of violation of the First and Fourteenth Amendments had been made. The relief requested included a prayer that the redistricting plan approved and filed on August 7, 1971 be found valid, and that the Court make such findings or conclusions of law as will adjudicate State and Federal constitutional challenges as had been made or would be made. (A. 24)

The answer to the petition for declaratory judgment filed by Arlington Heights, Evanston and the individual respondents, who were municipal officials and electors, claimed a denial of due process and equal protection under the Fourteenth Amendment by virtue of the redistricting plan. (A. 32) The answer also claimed that citizens in District 3, which included a portion of the Village of Arlington Heights, had their voting rights substantially diluted as compared with other districts in that the population of that district was substantially higher than the other districts. The answer also claimed violations of constitutional requirements of equality of population, compactness and contiguity. It claimed that the districts were not compact and contiguous, did not take into consideration traditional and political boundary lines, and were unequal in population. It claimed that the individual respondents, as electors, were entitled to vote for members of the General Assembly in districts which are equal in population, are compact and contiguous, and take into account traditional and political boundary lines. (A. 34)

The Village of Oak Park and its municipal officials as individuals filed an answer to the motion for leave to file an original proceeding, in which it was alleged that the question of compactness and contiguity of legislative districts was a federal constitutional question. (A. 38) In its answer to the petition for declaratory judgment, Oak Park and its individual respondents alleged that the reapportion-

ment map as to Oak Park was improper because it failed to consider traditional political boundary lines, because it is not compact and contiguous, and because it violated the one man-one vote rule. (A. 41).

In his answer to the petition for declaratory judgment, John A. Grivetti, Jr., an elector respondent, alleged that the proposed districts were not compact, contiguous or substantially equal in population, and the courts should examine the proposed district map to determine whether it was in fact valid under the Constitution of the United States. He also alleged that the federal claims then pending in the District Court were based on the requirement that all persons should have an equal voice in the selection of their representatives.

In its final opinion, as modified on rehearing, the Illinois Supreme Court specifically noted that all substantive issues before the Federal Court were also raised in this proceeding. The Court at page 165 noted:

> "We proceed to consider whether the plan before us complies with other State and Federal constitutional requirements and is therefore suitable for adoption by us as a provisional reapportionment plan." (A. 11)

The Court concluded at page 168:

> "The redistricting plan heretofore filed with the Secretary of State of Illinois on August 7, 1971, as subsequently corrected, in our opinion complies with both State and Federal constitutions." (A. 14)

ARGUMENT AMPLIFYING REASONS FOR ALLOWANCE OF WRIT.

The writ herein should be allowed because this case raises squarely the question of whether all citizens of Illinois are entitled to vote for members of the General Assembly from districts which are not only equal in population but are compact and contiguous as required by the Illinois Constitution.

We respectfully suggest that, under the applicable decisions of this Court, the Fourteenth Amendment requires that each citizen shall be entitled to an equally effective voice in the election of members of the State Legislature and that a legislative reapportionment scheme which disregards the mandate of the State Constitution violates the equal protection clause. *Whitcomb* v. *Chavis,* 29 L. ed. 2d 563, 575; *Reynolds* v. *Sims,* 377 U. S. 533, 12 L. ed. 2d 506, 529; *Baker* v. *Carr,* 369 U. S. 186, 7 L. ed. 2d 663.

The Illinois Supreme Court has specifically found that the provisional redistricting plan which it adopted complied with both the State and Federal Constitutions. It made this determination in the face of the fact that the districts so created were clearly not compact and contiguous and after failing to hear evidence on the questions of equality of population. The boundaries of the gerrymandered legislative districts totally ignore traditional political boundary lines and, for no apparent reason, fragmented major political subdivisions, including four of the most populous municipalities in Cook County. The opinion of the Illinois Supreme Court apparently relied on the fact that only discrimination of racial or strictly political nature falls outside the realm of permissible state activity.

It is respectfully suggested that the paramount right of each individual citizen in Illinois to have a full and equal share in the selection of his state representatives has been unreasonably frustrated by the redistricting plan sanctioned in the opinion below. We suggest that the fundamental protections of the Fourteenth Amendment are denied to voters within the respondent municipalities, whose effectiveness in choosing members of the Illinois General Assembly has been curtailed by a redistricting plan which totally ignores the dictates of the State's own constitution. We suggest that a primary federal question is raised by this proceeding—the question of whether a state voter is

entitled under the Federal Constitution to a redistricting plan which meets the standards of his own State Constitution. We think the decision of the Illinois Supreme Court is not in accord with the applicable decisions of this Court and should not be allowed to stand.

I.

The Equal Protection Clause Entitles State Voters to Elect Members of the General Assembly from Districts Which Are Compact and Contiguous, as Well as Equal in Population.

The mandate of the Illinois Constitution is clear. Legislative districts shall be "compact, contiguous and substantially equal in population." Although the Illinois Supreme Court refused the petitioners herein the right to present evidence on the basic factual questions of equality of population and the configuration of legislative districts, it is clear from the pleadings alone that the basic constitutional requirement of Section 3 of Article IV of the Illinois Constitution respecting legislative redistricting was ignored. Appended to this petition are maps showing the legislative districts in which Evanston, Arlington Heights and Oak Park were placed. An examination of the maps alone indicates the travesty of the allegation that these are compact and contiguous districts.

District 1, which includes portions of the City of Evanston and the Village of Arlington Heights, extends from Lake Michigan on the east to the west line of Wheeling Township on the west, and to the Cook County line on the north. The district totally bisects Evanston Township which is co-terminous with the City of Evanston. It includes portions of Evanston Township, New Trier Township, Northfield Township and Wheeling Township, and all or a portion of the Villages of Wilmette, Kenilworth, Glen-

coe, Northbrook, Northfield, Glenview, Wheeling, Arlington Heights and Buffalo Grove. Its configuration is attenuated, irregular and illogical.

The City of Evanston is also included in the so-called 11th District, a substantial portion of whose population resides within the City of Chicago. Parts of the Village of Arlington Heights are also located in three other legislative districts of odd shape.

The Village of Skokie finds itself divided between three districts.

The Village of Oak Park, which is a compact area, 1½ miles by 3 miles in a rectangular shape, has been divided into three districts. In one district, a small tip of the district, about four blocks in width, extends into Oak Park and then west of Oak Park balloons 15 miles north and south.

The downstate districts are also extremely irregular and gerrymandered, as an examination of the map attached as an appendix to this petition will reveal.

Suffice it to say that the Illinois Constitution contemplates that each voter shall be entitled to elect his representatives from a district which is compact and contiguous. This Court has repeatedly recognized that the Fourteenth Amendment protects an equality of rights in the election of members of state legislatures. Thus, in *Baker* v. *Carr,* 396 U. S. 186, 7 L. ed. 2d 663, Justices Douglas and Clark, in concurring opinions, pointed out that the equal protection clause of the Fourteenth Amendment is violated by a statute apportioning legislative districts which is arbitrary and capricious in disregarding the standards of apportionment prescribed by the state's constitution.

In *Reynolds* v. *Sims,* 377 U. S. 523, 12 L. ed. 2d 506, this Court, in passing on a reapportionment plan for the Alabama legislature, pointed out at page 565:

> "Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of the members of his state legislature. Modern and viable state government needs, and the constitution demands, no less."

In the case of *Whitcomb* v. *Chavis*, 29 L. ed. 2d 363, this Court at page 375 cited a long series of cases for the proposition that:

> "Representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies."

In the case of *Avery* v. *Midland County Texas*, 390 U. S. 474, 20 L. ed. 2d 45, this Court, in passing on a plan for election of county commissioners, pointed out at page 479:

> "The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State.
>
> " 'Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action. . . .' Cooper v. Aaron, 358 U. S. 1, 17, 3 L. ed. 2d 5, 16, 17 S. Ct. 1401 (1958)."

See, also, *Hadley* v. *Junior College District*, 397 U. S. 50, 25 L. ed. 2d 45.

The Illinois Supreme Court opinion reflects the position that the only federal question involved is one of equality of population. It says at page 167:

> "Accordingly, it is our opinion that this redistricting plan may be adopted despite the obvious fragmentation of the established political subdivisions."

We recognize this Court's repeated insistence that the requirements of "one man-one vote" may not be violated

simply to protect existing political boundary lines. We suggest, however, that there is no need to make a choice; that legislative boundary lines can in fact be drawn to preserve the Illinois constitutional requirements of equality of population, compactness and contiguity. The Illinois Supreme Court in its own opinion ignored the requirements of its own Constitution. By so doing, it violated the right of every Illinois citizen to vote for members of the General Assembly from legislative districts which meet the State constitutional requirements. A redistricting scheme which violates the State Constitution deprives electors of their federally protected right of equal protection of the laws.

II.

The Legislative Districts Violate the Fourteenth Amendment to the United States Constitution.

As indicated above, the Fourteenth Amendment requires adherence to State constitutional requirements, as well as equality of population, in the drawing of legislative districts. As indicated, the four municipalities of Evanston, Arlington Heights, Skokie and Oak Park have been fragmented and the legislative district which encompass them are horrible examples of gerrymandering.

An examination of the downstate districts also indicates clearly that legislative districts, other than Cook County, also do not meet the constitutional requirements of compactness and contiguity (Appendix H). The Court's attention is particularly directed to District 56, which does not even purport to be contiguous, but is joined together only by the waters of the Mississippi River. District 36 is not compact and contiguous, but is composed merely of a strip or corridor for the purpose of uniting townships in Whiteside County with Rock Island County. District 49 is not compact and contiguous, but instead has a finger or corridor

taking in a portion of Madison County and thereby bisecting what would otherwise be District 56. District 39 is not compact and contiguous because, for among other reasons, it contains a corridor extending into District 42.

The Illinois Supreme Court in an earlier reapportionment case defined the meaning of compact and contiguous. In the case of *People* v. *Thompson*, 155 Ill. 451, the Court at page 478 said:

> "Not much fault can be found with this contention, but we are of the opinion that as used in the constitution, and applicable to mere territorial surface, the word 'compact' means 'closely united,' and that the provision that districts shall be formed of contiguous and compact territory means that the counties, or subdivisions of counties (when counties may be divided), when combined to form a district, must not only touch each other, but must be closely united, territorially. The requirement of contiguousness was contained in the constitution of 1848, and it was evidently the intention of the people, in adding the requirement of compactness in the constitution of 1870, to guard, as far as practicable, under the system of representation adopted, against a legislative evil commonly known as the 'gerrymander,' and to require the legislature to form districts, not only of contiguous, but of compact or closely united, territory."

In the case of *People* v. *Moyer*, 298 Ill. 143, the court said at page 148:

> "The word 'compact' means 'closely and firmly united;' 'knitted or pressed together;' 'solid;' 'arranged or packed in a small compass.' Its antonyms are, 'diffuse;' 'loose;' 'scattering;' 'straggling.' "

We ask this Court merely to look at this map and to determine in its own mind whether any reasonable definition of "compact and contiguous" could be applied.

The courts of other jurisdictions have not hesitated to strike down legislative districts which in fact were a

great deal more "compact and contiguous" than the districts complained of here. In the case of *State* v. *Hitchcock*, 146 S. W. 40, the Missouri Supreme Court struck down districts as lacking compactness under circumstances which were not as blatant as those in the case at bar. The court relied upon the Illinois decision in *People* v. *Thompson*, 155 Ill. 451. In *State* v. *Hitchcock*, the Missouri Supreme Court reviewed a number of cases from other jurisdictions on the question of what compact and contiguous meant. In addition to the *Thompson* case, it considered at length the Wisconsin Supreme Court decisions in *State* v. *Cunningham*, 83 Wisc. 151, and *State ex rel. Cunningham*, 81 Wisc. 528, 51 N. W. 744, and *Sherrill* v. *O'Brien*, 188 N. Y. 185, 81 N. E. 124. In the *Hitchcock* case, the court said at page 65:

> "There, as here, the evident intention of the people of the state, as manifested in said constitutional provision, is that, when counties are combined to form a district, they must not only touch each other, but they must be closely united territory, and thereby guard, as far as practicable, the system of representation adopted in the state against the legislative evil commonly known as the 'gerrymander.'"

The case of *Sherrill* v. *O'Brien*, 188 N. Y. 185, also involved a declaration that a mandatory provision of the Constitution had been violated in that the Thirteenth District was not as compact in form as practicable. The court there held that the lack of compactness of the Thirteenth District and the over-population of another district rendered the entire apportionment wholly invalid. Its resemblance to the Fourth purported Illinois District is so obvious as to be unmistakable, but the Second Illinois District makes it a model of compactness by comparison. At page 210, the New York Court said:

> "A reference to the diagram will show how grossly the provision of the Constitution in regard to compact-

ness has been violated in the thirteenth senatorial district which is within the county of New York. . . . no effort whatever seems to have been made to make the district mentioned in as compact form as practicable.

"The reasons alleged for the rambling territory comprising the thirteenth senate district with its boundaries of many sides and various angles are wholly immaterial and not recognized by the Constitution in the apportionment of senate districts."

We respectfully submit that the districts, as indicated in the pleadings and exhibits attached to this petition, are clearly not compact and contiguous within the meaning of the Illinois Constitution. The redistricting plan therefore does not meet the requirements of the Illinois Constitution and denies to the electors of Illinois equal protection of the laws in violation of the Fourteenth Amendment to the Federal Constitution.

III.

The Legislative Districts Totally Ignore Traditional Boundary Lines.

The City of Evanston, with its 80,000 people, is divided into two districts, the 1st and the 11th, in which the Evanston population in each instance would be but a small percentage of the whole. Contrary to the prior district, Evanston Township, which is co-terminous with the City, is divided into two legislative districts. A portion of the City would be in a district whose majority of population would be from the City of Chicago. The remaining portion of Evanston would be in the 1st District, which extends from Lake Michigan on the east to the Village of Buffalo Grove on the west and the Cook County line on the north.

The Village of Arlington Heights fares even worse, being divided into some four districts, with most of its

population included in three different districts, the 1st District; the 2nd District, which includes portions of municipalities from Lake Barrington in Lake County on the north to Weston in DuPage County on the south; and the 3rd District which includes portions of Mount Prospect, Rolling Meadows, Schaumburg, Elk Grove Village, Hoffman Estates, and Hanover Park. In addition, a small portion of Arlington Heights is located in the Lake County District. Thus, the voting power of the 70,000 Arlington Heights citizens is totally fragmented.

The divisions of Oak Park and Skokie into three districts has been described above.

In the very recent case of *Skolnick* v. *State Electoral Board of Illinois*, 336 F. Supp. 839, a three judge district court recognized the importance of considering existing political boundaries in legislative redistricting. The Court at page 843 said:

> The shortcoming of plaintiff's map is that it ignores traditional boundaries of political subdivisions for the sole purpose of drawing compact, contiguous districts. Certainly compactness and contiguity are desirable features. Indeed, all four maps have districts which are compact and contiguous. However, they are not required by the Constitution, and to ignore effective representation for the sake of district symmetry is not proper. There are values to the preserved in drawing districts which in some way attempt to follow boundaries of cities, townships, counties, etc. It became apparent upon cross-examination of plaintiffs' expert that, at least in Cook County, some effort was made to observe traditional boundaries of political subdivisions. However, plaintiffs' too rigid adherence to the boundaries of census tracts, without regard to traditional political boundaries, requires that their proposed map be rejected.

See also *Twiggs* v. *West* and *Stevenson* v. *West*, decided April 7, 1972 by the U. S. District Court for the District of

South Carolina, Columbia Division, and *Bussie* v. *McKeithen,* decided by Eastern District of Louisiana, September 10, 1971.

In the case of *Reynolds* v. *Sims,* 377 U. S. 533, this Court pointed out that indiscriminate districting, without regard for any political subdivisions or natural or historic boundary lines, may be little more than an open invitation to partisan gerrymandering.

Unlike the *Skolnick* case, the districts approved by the Illinois Supreme Court here do not even have the virtue of being compact and contiguous.

In the recent case of *Abate* v. *Mundt,* 403 U. S. 182, 29 L. ed. 2d 399, the Court recognized that the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality in electoral apportionment. In that case, the Court approved a reapportionment plan which recognized the long-standing local governmental structure in which the towns and counties worked.

In the instant case, the Supreme Court of Illinois opinion begged the question by assuming that the respondents wished to keep every municipality intact. We recognize that the traditional integrity of municipal and county boundaries may have to be sacrificed in part to achieve equality of population, but we respectfully suggest that no justification exists for the total ignoring of existing boundaries as was countenanced by the Illinois Supreme Court opinion. The result of these gerrymandered districts is to render almost impotent the substantial electoral power of the citizens of the municipalities involved and to dilute their effectiveness in local self-government.

The opinion of the Illinois Supreme Court in referring to *Gomillion* v. *Lightfoot,* 364 U. S. 339, 5 L. ed. 2d 110, appears to hold that only racial discrimination is frowned

upon in cases involving the right to vote. This Court's opinion in *Gomillion* does not warrant such a conclusion. It is clear that the gerrymandering was indulged in for the purposes of racial discrimination in *Gomillion*, but it is also clear that discrimination between voters is not to be countenanced, regardless of the motivation.

We would also stress the fact that the original proceeding in the Supreme Court was determined without the opportunity accorded the respondents to introduce evidence on the factual questions of population, compactness and contiguity. We suggest that elemental concepts of due process entitled us to an opportunity to be heard in an evidentiary proceeding. Instead, the Illinois Supreme Court considered maps and population figures presented after oral argument, without according the respondents the opportunity to present evidence and to question the population figures and maps submitted by the Redistricting Commission in an adversary situation.

We respectfully urge that the constitutional rights of the respondents were severely impaired by the failure to permit the parties to present evidence in a traditional adversary judicial setting.

CONCLUSION.

We respectfully submit that the opinion of the Illinois Supreme Court constitutes a severe limitation on the constitutional rights of the electors of the State of Illinois and this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

OPINION OF ILLINOIS SUPREME COURT.

(No. 44744.—Provisional redistricting plan adopted.)

THE PEOPLE *ex rel.* WILLIAM J. SCOTT, Attorney General, Petitioner, v. JOHN A. GRIVETTI *et al.*, Respondents.

Announced Dec. 10, 1971.—Opinion filed Dec. 17, 1971. Modified on denial of rehearing Jan. 27, 1972.

1. ELECTIONS—*State constitutional provision for Legislative Redistricting Commission does not violate Federal constitution.* Section 3(b) of article IV of the 1970 Illinois constitution, which provides that a Legislative Redistricting Commission composed of eight members appointed by the leaders of the House and Senate shall redistrict if the General Assembly has failed to do so, on its face is not violative of the first amendment and the equal-protection clause of the fourteenth amendment to the U. S. constitution. (p. 159)

2. CONSTITUTIONAL LAW—*Legislative Redistricting Commission was illegally constituted.* The intent of section 3(b) of article IV of the 1970 constitution was to create a redistricting commission composed of four legislators and four public members, and the appointment by three legislative leaders of themselves and their legislative aids to the Commission violates the constitution. (p. 161)

3. SAME—*when redistricting plan satisfies constitutional requirements.* Although the Legislative Redistricting Commission was illegally constituted, the redistricting plan created by it deviates less than 1% from the "perfect"

population figure giving one man one vote, and is sufficient for the election in 1972, as it satisfies requirements of equal protection and the State constitutional requirement that districts be "substantially equal in population;" and the requirement that the districts be compact and contiguous is satisfied although political subdivisions are fragmented into different legislative districts. (p. 166)

UNDERWOOD, *C.J.*, concurring in part and dissenting in part.

Original petition for declaratory judgment.

WILLIAM J. SCOTT, Attorney General, of Springfield, for petitioner.

JEROME H. TORSHEN; ARTHUR C. THORPE; SIEGAL, SABLE & STONESIFER; SCHIFF, HARDIN, WAITE, DORSCHEL & BRITTAN; all of Chicago; JOHN GRIVETTI, of Peru, and JOHN E. (JACK) CASSIDY, of Peoria, for respondents.

PER CURIAM: Decision of this case was announced by our order of December 10, 1971, released simultaneously with the opinion of the three-judge Federal court composed of Circuit Judge Sprecher and District Judges Austin and Napoli. Our December 10 order expressed to Judges Sprecher, Austin and Napoli our appreciation for their cooperation in accomplishing an expeditious resolution of the problems concurrently presented to both courts. That order indicated an opinion would be filed setting forth the reasons for the conclusions which we reached. This is that opinion.

This is an original action which presents for our consideration the question of the constitutional validity of the decennial redistricting plan for Illinois House and Senate districts filed with the Secretary of State by the Legislative Redistricting Commission. Six other actions challenging the redistricting of the Illinois legislative

districts were pending in the Federal District Court for the Northern District of Illinois at the time of commencement of these proceedings. All of the plaintiffs in those actions have been impleaded as respondents in this case, and it appears that all substantive issues before the Federal court are also raised in this proceeding. In view of the recognized state judicial power "to require valid reapportionment or to formulate a valid redistricting plan" (*Scott* v. *Germano*, 381 U. S. 407, 409, 14 L. Ed. 2d 477, 85 S. Ct. 1525), and because the date for filing of nominating petitions for the House and Senate was fast approaching we expedited the hearing and disposition of this case.

The method of redistricting the State legislative districts is set forth in section 3(b) of article IV of the 1970 constitution. That section provides in relevant part that "in the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts. If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party." With regard to the manner of selection of the Commission, the constitution provides that "the Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly." Section 3(b) further states that "not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members." It is also provided that "an approved redistricting plan filed with the Secretary of State shall be presumed valid, shall

have the force and effect of law and shall be published promptly by the Secretary of State."

The 77th General Assembly failed to redistrict itself prior to June 30, 1971, following the decennial census year of 1970. Accordingly, a Legislative Redistricting Commission was constituted. The Speaker and Minority Leader of the House of Representatives and the President Pro-Tem of the Senate each appointed themselves to the Commission and also appointed their respective legislative aides as non-General Assembly members of the Commission. The Minority Leader of the Senate appointed another Senator of his choice to the Commission and also appointed another individual as a non-General Assembly member of the Commission. Thus constituted, the Commission adopted a redistricting plan and filed it with the Secretary of State prior to the August 10, 1971, deadline. It is this plan which is now before us for review.

The five primary issues raised in oral argument and in the pleadings filed by the various parties herein may be summarized as follows: (1) Is section 3(b) of article IV of our constitution violative of the Federal constitution in that it places the selection of the Redistricting Commission under the control of the majority and minority leaders of the House and Senate; (2) Was the Legislative Redistricting Commission properly selected in accordance with section 3(b) of article IV of the constitution; (3) Did the redistricting plan meet the State and Federal "one man-one vote" constitutional requirement and the further requirement of the Illinois constitution that all districts be compact and contiguous; (4) Is the redistricting plan invalid in that it does not adhere strictly to traditional and political boundaries; and (5) What is the effect of certain "corrections to the redistricting plan filed with the Secretary of State by members of the Legislative Redistricting Commission on November 5, 1971?

As to the first issue, certain of the respondents contend that section 3(b) of article IV of our constitution is violative of the first amendment and the equal protection clause of the fourteenth amendment to the constitution of the United States in that it places control over the redistricting process in the hands of the major party leaders and excludes any participation by representatives of other political parties or independent voters; *i. e.*, there is a denial of access to reapportionment proceedings to all persons who are not affiliated with, or members of, the two major parties. On its face section 3(b) neither restricts membership on the Commission to particular political parties or persons claiming particular interests nor does it exclude them. More importantly, however, there has been no showing in this case of how the provisions in question have any legally harmful effect on respondents. Respondents imply that unless they take part in the selection of the Legislative Redistricting Commission their interests will not be represented on the Commission with the result that any redistricting plan adopted by the Commission inevitably will discriminate against them. This argument is highly speculative and abstract and, in our opinion, does not provide any basis for a legal remedy. If every group having particular political viewpoints or alleging particular interests was required to be directly involved in the selection of the Commission or directly represented on the Commission itself, it is obvious that the group selecting the Commission and the Commission itself would reach almost boundless and unworkable proportions. It must also be remembered that section 3(b) places initial responsibility in the legislature to adopt a redistricting plan. At this stage the redistricting process is entirely under the control of a body elected by all the people. Only when the legislature fails to fulfill its duty to redistrict does the smaller, eight member Legislative Redistricting Commission come into

being to accomplish that task. In our opinion, this is neither an unreasonable nor discriminatory method of attempting to provide a solution to legislative nonfeasance. Also, in drawing the districts, the Commission is clearly bound by section 3(a) of article IV which provides that "legislative districts shall be compact, contiguous and substantially equal in population." If the Commission complies with this constitutional mandate, a matter which is subject to judicial review, then all voters of the State of Illinois will thereafter have an equal voice in electing State legislators. We conclude that section 3(b) of article IV of the constitution on its face is not violative of the first amendment and the equal protection clause of the fourteenth amendment to the United States constitution and does not infringe upon any constitutionally protected interests of the respondents in this case.

It is also argued that section 3(b) of article IV of the constitution reflects an improper delegation of legislative power. The answer to this contention is that we are not here concerned with a State legislative enactment which purports to delegate functions of a legislative nature, but rather with a provision of our State constitution which expressly directs the redistricting of the legislature by the Legislative Redistricting Commission in accordance with specified standards. It is clear that no real delegation of power question under either the State or Federal constitutions is involved in this case.

It is further contended that the Legislative Redistricting Commission created by section 3(b) of article IV was illegally composed in that three of the persons having appointive power appointed not only themselves but also their legislative aides to the Commission.

We agree, for the purpose of section 3(b) of article IV is, in our judgment, completely clear. As originally

proposed to the 1970 Constitutional Convention by the committee on the legislature, it provided for a redistricting commission composed of eight members of the legislature, two of whom were to be appointed by the majority leader, and two by the minority leader in each house. That proposal was predicated on the fact that the original committee recommendation excluded the legislature from the reapportionment process. On first reading, however, the procedure was changed to give the legislature the first opportunity to reapportion. Thereafter an amendment, co-sponsored by others, was offered by Delegate Perona, the substantive effect of which was to reduce the legislative representation on the eight-member commission to four, to be selected in the same manner as the original eight. The other four commission members were to be appointed by the same legislative leaders but were to be "person[s] who [are] not" members of the General Assembly.

The explanation of that amendment as given by Delegate Perona in the debates preceding its adoption is in part as follows: "It is the position of the supporters of this amendment, who include myself, Mr. Lewis, Mrs. Reum, Mr. Peccarelli and Mr. Sommerschield; Mrs. Pappas, Mr. Martin, Mrs. Netsch and Mr. Parkhurst, that given the opportunity in the Legislature to have first crack at the process of apportionment that it would be wise in the second step of the process to introduce some nonlegislative members to hopefully, if necessary, bring in a new viewpoint of a little different point of view to the process. This amendment in the place of an eight member legislative commission would substitute four legislative members and four non-legislative members. They would still be appointed by the same persons and the equal party division would remain the same. We feel that this concept is in line with the original concept but because of the

change in situation insofar as the procedure, that this would be an advantage and a change that would make sense with this situation in existence." Sixth Illinois Constitutional Convention Debates, Vol. 107, pp. 338-39.

Other delegates in the course of their arguments supporting the subsequently adopted amendment stated the inclusion of the four public members would "inject a little new blood, so to speak, into the process of reapportionment" (Delegate Evans at 341); "I think it's rather ridiculous to have a reapportionment commission which acts after the legislature has failed to reapportion, which is wholly legislative in nature" and the amendment would "put some life back in the process" (Delegate Sommerschield at 342). The Perona amendment was adopted by a vote of 54 to 26.

It is abundantly clear that the intent of the delegates to the 1970 Constitutional Convention was to create a redistricting commission composed of four legislators and four public members, and that their purpose in so doing was to bring into the commission a fresh, perhaps more objective, approach to the apportionment problems which had deadlocked the legislature. By requiring one half of the commission's membership to be individuals not theretofore involved in the legislative redistricting struggles, the prospects of the commission's success were thought to be enhanced.

While appointment to membership on the commission of their legislative aides by the President Pro Tem of the Senate and the Speaker and Minority Leader of the House was a literal compliance with the language of section 3(b), since those aides were not, in the strict sense, "members of the General Assembly," that action was, in reality and in practical effect, a subversion of the purpose of that language. Nor do we believe the action of the President Pro

Tem of the Senate and the Speaker and Minority Leader of the House of Representatives in appointing themselves to the commission was authorized by the Constitutional provisions. Had such action been contemplated, section 3(b) would have so stated, particularly when it is considered that the public policy against self-appointment is of long standing and well known. The fact that no compensation is provided for members of the commission is immaterial.

The net result of this action was, in our judgment, the same as though six members of the legislature had been appointed, for, although the aides were not technically members of that body, it is obvious that, as its employees and assistants to its leaders, they could scarcely be thought to be independent of it. Clearly they were not representative of the general public nor likely to bring to the reapportionment proceedings the "fresh approach" envisioned by the delegates at the time the amendment mandating the appointment of four public members was adopted.

The thwarting of the purpose of the "public member" provision is even more apparent when the actual result of the commission's deliberations is analyzed. The redistricting plan adopted by the commission received the approving votes of six of its eight members. Those six votes were cast by the self-appointed legislative members and their aides. Senator Clarke and former Governor Stratton (both of whom had been appointed by the Minority Leader of the Senate) voted against the plan. It is, of course, apparent, that violation of the constitutional mandate that the commission be composed one half of legislators and one half of public members resulted in almost total exclusion of the public, since seven of the eight commission members were either legislative members

or their alter egos. Under these circumstances, to hold the commission a *de facto* body and its product valid would sanction an impermissible violation of the constitution's commands.

The dissenting opinion would sanction the continuation of the violation or disregard of constitutional provisions that prevented legislative reapportionment in this State under the constitution of 1870. The extensive dictum in that opinion concerning the desirability of a "ten-year plan" assumes that within each ten-year span there will be no population shifts which will require reapportionment under the Federal constitution. It also assumes that action by an illegally constituted commission will be less heavily partisan than action by the General Assembly. In our opinion neither assumption is warranted.

While we recognize that under less extraordinary circumstances the rule followed in cases such as *Engle* v. *Kerner*, 32 Ill. 2d 212, *People ex rel. Chillicothe Twp.* v. *Board of Review*, 19 Ill. 2d 424, and *Leach* v. *People ex rel. Patterson*, 122 Ill. 420, might well prevail and the commission be considered a *de facto* body and its work product valid, we believe that rule cannot here prevail. The fundamental difference between those cases and this is manifest. In *Engle* we held our State Senate, the members of which had been elected from unconstitutionally apportioned districts, was composed of *de facto* officeholders with authority to act; in *Chillicothe Twp.* a board of review with two Democratic—one Republican membership was held to be composed of *de facto* officers and its acts valid as to third parties even though the statute governing membership on the board apparently required, in view of the results of the immediately preceding election, a two Republican—one Democratic division; in *Leach* members of a board of supervisors elected pursuant to a statute held to be unconstitutional were nonetheless

held to be *de facto* officers. It will be observed that in those instances, the defect in the appointment or election arose, not from the acts of the individuals whose subsequent performance of the duties of the office is challenged, but from sources beyond their control. Here, the opposite is true. The presence of the legislative leaders and their aides upon the Redistricting Commission is the direct result of the acts of those individuals. Under these circumstances we do not believe they can be accorded a *de facto* status which would validate the resulting plan. The strong public policy against self-appointment described in 3 McQuillen, Law of Municipal Corporation, 3d Ed. sec. 12.75, and 43 Am. Jur. Public Officers, sec. 97, precludes recognizing as valid a product formulated by means so completely at variance with the constitutional mandate. *State* v. *McDaniel*, 52 Del. 304, 157 A. 2d 463; *State* v. *Thompson*, 193 Tenn. 395, 246 S. W. 2d 59; *Arbogast* v. *Shields*, 123 W. Va. 167, 14 S. E. 2d 4, 7; *Ehlinger* v. *Clark*, 117 Tex. 547, 8 S. W. 2d 666.

In view of our previously exercised responsibility (*People ex rel. Scott* v. *Kerner*, 32 Ill. 2d 539; *People ex rel. Engle* v. *Kerner*, 33 Ill. 2d 11) to determine that the legislative body of this State is elected pursuant to a constitutionally valid plan, we proceed to consider whether the plan before us complies with other State and Federal constitutional requirements and is therefore suitable for adoption by us as a provisional reapportionment plan.

It is well settled as a matter of Federal constitutional law that State legislative districts must be the "one man—one vote" equality of population requirement. (*Hadley* v. *Junior College District*, 397 U. S. 50, 25 L. Ed. 2d 45, 90 S. Ct. 791; *Kirkpatrick* v. *Preisler*, 394 U. S. 526, 22 L. Ed. 2d 519, 89 S. Ct. 1225; *Reynolds* v. *Sims*, 377

U. S. 533, 12 L. Ed. 2d 506, 74 S. Ct. 1362; *Baker* v. *Carr*, 369 U. S. 186, 7 L. Ed. 2d 663, 82 S. Ct. 691; *Wesberry* v. *Sanders*, 376 U. S. 1, 11 L. Ed. 2d 481, 84 S. Ct. 526.) The 1970 Federal Decennial Census shows that the State of Illinois had a population of 11,113,976. Consequently, the mathematically "perfect" population of each of the State's 59 legislative districts would be 188,372. The actual population, as indicated by the Commission, of each of the new legislative districts deviates less than 1% from thie "perfect" figure. In our opinion, the plan complies as closely as reasonably possible with the Federal "one man—one vote" requirement and the corresponding provisions of section 3(a) of article IV of our constitution that all legislative districts shall be "substantially equal in population."

Certain of the respondents in this case contend that the redistricting plan does not meet the requirements of section 3(a) of article IV of the Illinois constitution that legislative districts shall be compact and contiguous. It is apparent that not all of the legislative districts are perfectly compact, and it is equally apparent that some districts are more physically compact than others. However, compactness, while an end to be sought in the redistricting process, is clearly subservient to the dominant requirement of equality of population among legislative districts. In view of this fact, and upon consideration of the plan as a whole, we are of the opinion that the plan contains reasonably compact and contiguous legislative districts and is not violative of section 3(a) of article IV of the constitution.

It is further argued by respondents that the redistricting plan if invalid because it fails to take into account traditional political boundary lines. As an example, it is pointed out that the city of Evanston is divided between two legislative districts, each of the villages of Oak Park and Skokie is divided between three districts, and the village of Arling-

ton Heights is divided between four districts. Respondents contend that these divisions effectively diminish the power of the citizens of each municipality as a group to elect representatives of their choice to the General Assembly. They argue further that under the redistricting plan they do not share a community of interest with individuals in other parts of the newly created districts. We can well understand the respondents' desire that their respective municipalities be located within one single legislative district. With respect to congressional redistricting, the United States Supreme Court has held that there is no justification for any population variances which result from a State's attempt to avoid fragmenting political subdivisions by drawing congressional district lines along existing county, municipal or other political subdivision boundaries. (*Kirkpatrick* v. *Preisler*, 394 U. S. 526.) While this holding may not necessarily apply with full force and effect to the redistricting of state legislative districts (*Reynolds* v. *Sims*, 377 U. S. 533) or to redistricting involving county government (*Abate* v. *Mundt*, 403 U. S. 182, 29 L. Ed. 2d 399, 91 S. Ct. 1904), it is nevertheless very clear that the "one man-one vote" requirement must be the controlling consideration in the apportionment of seats in any particular legislative body. Considering the high density of population in the area surrounding Chicago and the large number of municipalities of diverse size and population within that area, we think it would be practically impossible to conceive a redistricting plan which would keep every municipality intact and at the same time comply with the Supreme Court's "one man—one vote" rule. We note also that there is no question here of the type of invidious descrimination of a racial or even political nature which the court has frowned upon in the past. (*Burns* v. *Richardson*, 384 U. S. 73, 16 L. Ed. 2d 376, 865 S. Ct. 1286; *Fortson* v. *Dorsey*, 379 U. S. 433, 13 L. Ed. 2d 401, 85 S. Ct. 498;

Gomillion v. *Lightfoot,* 364 U. S. 339, 5 L. Ed. 2d 110, 81 S. Ct. 125.) Accordingly, it is our opinion that this redistricting plan may be adopted despite the obvious fragmentation of the established political subdivisions.

The redistricting plan heretofore filed with the Secretary of State of Illinois on August 7, 1971, as subsequently corrected, in our opinion complies with both State and Federal constitutions. It is therefore adopted by this court as a provisional redistricting plan for the election of members of the General Assembly of this State in 1972. A redistricting plan for subsequent elections shall be adopted pursuant to the procedures outlined in section 3 of article IV of the 1970 constitution of this State.

Provisional redistricting plan adopted.

MR. CHIEF JUSTICE UNDERWOOD, concurring in part and dissenting in part:

I am in agreement with the opinion of the Court except in two respects: I do not believe the action of the President Pro Tem of the Senate and the Speaker and Minority Leader of the House of Representatives in appointing themselves as members of the Restricting Commission was necessarily repugnant to the intent and purpose of section 3(b); and, in my judgment, the Commission should be held to be composed of three *de facto* and five *de jure* officers and its product a valid plan.

In my opinion the very substantial majority of the reported decisions, both in Illinois and elsewhere, support the conclusion that the legislative aides to the President Pro Tem of the Senate and to the Speaker and Minority Leader of the House were *de facto* members of the Commission and their acts in that capacity valid as to third parties or when those acts concerned the public as they necessarily did here. As this court said in *People ex rel. Hess* v. *Wheeler*, 353 Ill. 147, 150: "The commissioners had power to make a temporary appointment of a treasurer and thus create a *de jure* officer. Though their appointment was of one who was not entitled or qualified to serve, yet it has many times in this State been held that the acts of one acting as a *de facto* officer are valid when they concern the public or the rights of third persons who have an interest in the act done. * * * Such a person will be considered a *de facto* officer though there may be irregularities in his appointment or lack of qualification on his part which would be fatal to his title in a direct proceeding. [Citing cases.]." See also, *People ex rel. Engle* v. *Kerner*, 32 Ill. 2d 212; *People ex rel. Chillicothe Twp.* v. *Board of Review*, 19 Ill. 2d 424; *Leach* v. *People ex rel. Patterson*, 122 Ill. 420; *Gladson* v. *Wilson*, 196 Ark. 996, 120 S. W. 2d 732; *State*

ex rel. Hawthorne v. *Wiseheart*, 158 Fla. 267, 28 So. 2d 589; *Hetrich* v. *County Com'rs. of Anne Arundel County*, 222 Md. 304; 159 A. 2d 642; *Commonwealth ex rel. McCreary, Dist. Atty.* v. *Major*, 343 Pa. 355, 22 A. 2d 686; *State ex el. Kenney* v. *Ranslow*, 21 Conn. Supp. 294, 154 A. 2d 526.

The self-appointment by the legislative leaders condemned by the court deserves separate treatment. That condemnation is predicated upon the strong public policy against such action. That public policy has been announced, however, only—so far as I am aware—in those cases where the governing law did not authorize members from the appointing group to serve upon the body or in the office to which the appointment is made. Here, however, we have a significant and, I believe, a controlling distinction. Section 3(b) specifically provides that two senators and two representatives shall be appointed to the Commission. I am not at all certain that the self-appointment is contrary to public policy nor inconsistent with the intent of the farmers of the constitution. The cases relied upon by respondents, in McQuillen, Law of Municipal Corporations, 3d ed., sec. 12.75, and in American Jurisprudence (42 Am. Jur., Public Officers, sec. 97), generally speaking, dealt with situations where municipal officers exercised appointive powers to place themselves in other remunerative positions in municipal government. The appointments there were self-serving in nature, and the conflicts of interest inherent in the appointments were apparent. Here, to the contrary, I see in the presence upon the Commission of the legislative leaders nothing inconsistent with the constitutional provision, and the self-appointment aspects of the matter do not involve the objectionable characteristics found in the cases and text material cited by respondents and the court. Nor do I agree that failure of the constitution to specifically authorize service by the President Pro Tem, Speaker and Minority Leader upon the Commission necessarily manifests

an intent that they shall not appoint themselves. It may as easily be construed to manifest an intent to grant complete flexibility in the exercise of the appointing power.

Consequently, while I am in complete agreement that the appointment of the legislative aides was improper, I do not find in the self-appointment by the legislative leaders the objections apparently seen by my colleagues.

The difference between my views and those of my colleagues may, at first reading, seem too unimportant to warrant a dissent. On the contrary, it is, in my opinion, quite an important difference. As I understand our constitutional provisions incorporated in section 3(b), reapportionment shall occur "in the year following each Federal decennial census," and adoption of a redistricting plan is insured by a series of provisions, imposing that duty upon the General Assembly initially. Should it fail to succeed by mid-year a Redistricting Commission of eight members (no more than four from one political party) comes into being; failure of five members of that Commission to agree upon a plan results in the random choice of a "tie-breaker" (one of two persons of different political parties named by this court). This well-considered plan comes as close as human limitations permit to guaranteeing a reapportionment plan for this State in the year following each decennial census. Such plan, as I understand the constitution, will then prevail for the decade following its adoption—assuming, of course, it meets Federal and State constitutional requirements. Clearly, it is intended that it not be subject to change within that ten-year period, unless that change is necessitated by population shifts.

It seems to me, however, that only a legislatively adopted or Commission adopted plan is within the "once-a-decade" provisions of 3(b), a belief reinforced by the fact that the effect of the final paragraph of the majority

opinion provides that post-1972 elections shall be conducted pursuant to a legislatively or commission-adopted redistricting plan. Thus, the net result of the court's action is to convert into a one-election, one-year plan what was intended as a ten-year plan. If political fortune heavily favors one or the other of the major political parties in 1972, a substantially more partisan redistricting plan will be legislatively approved in 1973. That plan would then remain in effect for such portion of the ten-year period as remained and the next decennial reapportionment would then be undertaken by a heavily partisan legislature, thus, in all likelihood, perpetuating political control of the legislative branch of our State government in the hands of one or the other of the major parties. Such a result seems to me fundamentally undesirable.

Too, it should be remembered that any plan so adopted in 1973 will, almost automatically, be contested as this one was in both State and Federal courts with all of the uncertainty and instability in the election process which necessarily results. Certainty and stability in the boundaries of election districts (to the extent achievable in the narrow limits of existing "one-man one-vote" requirements) are, I think, highly desirable. The temporary redistricting plan which this court now creates serves only to promote an opposite result.

Whatever respondents may consider the other faults of the plan before us to be, there is no claim that it is heavily weighted in favor of either major party. I cannot agree that it should be converted into a temporary arrangement, nor that the General Assembly should be required to dissipate its time and energy in an effort to reapportion in 1973 when the best efforts of our legislators should be concentrated on resolving the truly significant problems before them.

APPENDIX B.

PETITION FOR DECLARATORY JUDGMENT AND ALL WRITS NECESSARY AND APPROPRIATE TO EFFECTUATE JURISDICTION.

The People of the State of Illinois on relation of undersigned counsel (called Petitioner) bring this petition as an original proceeding for declaratory relief "concerning redistricting of the House and Senate" and for issuance of such writs; as are necessary and appropriate to affectuate the original and exclusive jurisdiction prescribed by Section 3(b) of Article IV of the Constitution of Illinois (1970); against John W. Lewis, Richard B. Ogilvie, William J. Scott, Alan J. Dixon, Michael J. Howlett, James A. Ronan and Victor L. Smith (called Respondent officers). And such further process or relief as will constitute notice or interpleader on the other Respondents designated in the caption of this case as shown on the title page of these papers.

1) Jurisdiction is invoked pursuant to Section 3(b) of Article IV of the Constitution of Illinois (1970) which vests original and exclusive jurisdiction over actions concerning redistricting of the Illinois General Assembly as required by Section 3 of said Article. This petition is brought in the name of the People of the State of Illinois as is constitutionally required to initiate the broad original and exclusive jurisdiction delegated. The Attorney General has been involved in federal actions concerning the subject matter of this dispute since prior to August 27, 1971 but has failed to initiate any action with regard thereto.

2) Under Section 3 of said Article IV the 77th General Assembly was required to redistrict the House and Senate

prior to June 30, 1971. When it failed, the constitutional redistricting Commission prescribed by Section 3(b) was constituted prior to July 10, 1971 and consisted of eight members, no more than four of whom were members of the same political party. The speaker and minority leader of the House of Representatives and the president and minority leader of the Senate constituted the four legislative members and their respective appointees constituted the non-legislative members. Prior to August 10, 1971 the Commission filed with the Secretary of State a redistricting plan approved by at least five members. *The plan so filed is "presumed valid", has the effect of law and was required to be published promptly by the Secretary of State. Thus the legislative districts so enacted are constitutionally presumed to "be compact, contiguous and substantially equal in population".* [*Art. IV, § 3, Const. of Ill.* (1970)]

3) This action arises because of five actions seeking declaratory judgments and injunctions which have been filed in the United States District Court for the Northern District of Illinois (Chicago). These cases were filed on August 9, 1971, August 23, 1971, September 8, 1971, September 13, 1971 and October 4, 1971. In this order each said complaint is attached as Exhibits A through E. The Respondent officers are the named defendants in those claims which in sum seek the following relief:

(a) That Article IV Section 3(b) of the 1970 Illinois Constitution is violative of the First and Fourteenth Amendments to the Constitution of the United States and void.

(b) That the reapportionment adopted August 7, 1971 by the Commission is unconstitutional and void.

(c) That defendants (Respondent officers) be restrained from doing any act to publish or in any manner validate said redistricting plan and from holding any election based thereon.

(d) "That the Court devise and adopt a redistricting plan for the legislative districts of the Illinois General Assembly" and "if Section 3 of Article 4 be held to vest exclusive jurisdiction in all actions concerning redistricting to the Supreme Court of Illinois, then said Section be held to be unconstitutional for the reason that Federal Courts have jurisdiction to consider matters affecting the rights of citizens to vote". [Exhibit C, p. 17].

4) The Respondent officers are identified in the face page caption and are named in those official and *ex officio* capacities here as they are as defendants in the pending federal court suits. Respondent members *ex officio* of the Illinois Electoral Board [*Ill. Rev. Stat., Chap. 46 § 7-14*] are responsible for the initial stages of Illinois' elections procedures which include primary and general elections of members of the General Assembly. Respondent Secretary of State has the duty to receive and file approved legislative redistricting plans and to publish it promptly thereafter. [*Art. IV § 3(b) Const. of Ill.* (1970)]. Respondent Attorney General has the duty to invoke this Court's original and exclusive jurisdiction when any action is instituted concerning said redistricting by initiating an original proceeding in the name of the People of the State.

5) All other Respondents are the municipalities, their governing officers, political associations, their officers and individuals who are plaintiffs in the federal court suits referred to above. The municipalities of Arlington Heights, Oak Park and Evanston [Exhibits C, D & E] and their respective local officials object to the geographic boundaries of the new legislative districts in that they do not conform to their municipal boundaries and from this assert that General Assembly members cannot be elected who will represent the needs and best interests of their respective communities and "failing to consider traditional bound-

aries, the redistricting commission has denied . . . equal protection of the laws in violation of the Constitution of the United States". But the mean population factor for each district is 188,711 and the municipal Respondents allege that the population of Arlington Heights is 65,000 [Exhibit C, p. 2], of Oak Park is 60,000 [Exhibit D, p. 2] and of Evanston is 80,000 [Exhibit E, p. 2]. Respondent Grivetti's complaint alleges nothing more than that the plan "fails to comply with applicable decisions of the Supreme Court" and "contains districts which are not compact, contiguous or representative of a genuine community of interest" and give no "consideration of traditional political boundaries, which . . . deprive residents of such traditional areas of due process and equal protection of law". [Exhibit A, p. 2]. Respondent Independent Voters of Illinois and other individual respondents limit their claim to the provisions prescribing the method of constituting the Commission and assert a deprivation of First and Fourteenth Amendment rights because Section 3(b) of Article IV places "control over the redistricting process in the hands of the . . . major party leaders and totally excludes any participation in this process by representatives of other political parties or of persons who have been elected by . . . independent voters in Illinois", thus violates the Fourteenth Amendment; and further transgresses First Amendment rights "to associate freely with other citizens and voters in order to further common political goals" because the Commission's make-up puts "a premium on major party affiliation" and thus "the Commission imposes a corresponding penalty on these citizens not associated with one of the two major parties and whose interests will not . . . be represented on the Commission." [Exhibit B, pp. 10-11].

6) The Redistricting plan approved by the Commission constitutes a duly enacted law and "shall be presumed

valid". [*Art. IV § 3(b) Const. of Ill.* (1970)]. Thus, it is presumptively compact, contiguous and substantially equal in population" and thereby meets the only State and Federal constitutional standards required.

7) The conditional and narrowly defined legislative power which the Constitution vests in the Commission is legislative and in no sense can constitute an unlawful delegation of power so as to deprive any person of equal protection of the laws. And the implied claim premised on denial of a Republican Form of Government under Section 4 of Article IV of the Constitution of the United States is non-justiciable and futile.

8) The federal claims are but claims focusing on representation afforded after an election is over and do not involve the rights of voters to vote nor free and unfettered access to the political and electoral processes. The mere fact that an interest group (such as IVI), concerned with the outcome of an election have found themselves outvoted and without legislative seats of its own is not a premise for invoking state or federal constitutional remedies.

9) Neither the State nor the Federal Constitutions recognize any rights in a municipality as such. Nor, is there any law that secures to a municipality the right to legislative districting more likely to insure the election of one of its residents—particularly, when its population is substantially less than 50% of the mathematical standard required by the Fourteenth Amendment.

10) The five federal suits giving rise to this controversy have required the convening of a three-judge court [28 U. S. C. §§ 2281, 2284] and will not be heard until after November 4, 1971. [See: Exhibit F]. The Illinois primary is on March 21, 1972 and the first date for filing petitions is December 13, 1971. Chaos could result unless federal proceedings are stayed. But federal abstention is entirely dependent upon this Court exercising its jurisdiction.

11) As is shown by the federal court complaints attached as exhibits, the claims of other respondents are highly abstract, hypothetical and patently without merit. Upon this Court's exercise of its original and exclusive jurisdiction process should issue requiring other respondents to specifically interplead such State and Federal Constitutional claims as they may have. Upon their failure to do so, the Court should conclude that the redistricting plan is valid as presumed and enter declaratory judgment that it meets all State and Federal Constitutional standards and is otherwise in conformity with law.

WHEREFORE, petitioner prays that a declaratory judgment be entered that Section 3 of Article IV of the Illinois Constitution (1970) is valid and the redistricting plan approved and filed on August 7, 1971 is valid. Further, that the Court make such findings or conclusions of law as will adjudicate the State and Federal Constitutional challenges as have been and may be made. And further, that such writs be issued as may be necessary or appropriate to effectuate the judgment herein and the original and exclusive jurisdiction of the Supreme Court of Illinois over matters concerning the redistricting of the Illinois General Assembly.

Respectfully submitted,

THE PEOPLES OF THE STATE OF ILLINOIS,
Petitioners, by their attorneys:

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10 South LaSalle Street,
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Telephone: 312/236-3914,

CASSIDY & CASSIDY,
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Peoria, Illinois 61602.

APPENDIX C.

ANSWER TO PETITION FOR DECLARATORY JUDGMENT AND ALL WRITS NECESSARY AND APPROPRIATE TO EFFECTUATE JURISDICTION.

Now come the Village of Arlington Heights, a municipal corporation, John J. Walsh, Ralph H. Clarbour, Alice Harms, Francois N. Palmatier, James T. Ryan, Theodore Salinsky and Dwight F. Walton, individually, and as governing officers thereof, the City of Evanston, a municipal corporation, Edgar Vanneman, Jr., Frank K. Hoover, James F. Pittsford, Arnold F. Winfield, Thomas H. Brinkman, Joan W. Connor, James B. Moran, Quaife M. Ward, William E. Harper, Jr., Edna W. Summers, Roosevelt M. Alexander, Craig J. Cain, John O. Wyandt, Peter D. Jans, James G. Staples, Michael E. Schiltz, John K. Kneafsey, James P. McCourt, Maxine Lange, individually, and as governing officers thereof, Willian N. Erickson and Thomas Murphy, individually, and as political officials for established political parties, by Jack M. Siegel, their attorney, and in answer to the Petition for Declaratory Judgment and All Writs Necessary and Appropriate to Effectuate Jurisdiction, filed herein by the People of the State of Illinois on the relation of Fitzpatrick & Gulbranson and Cassidy & Cassidy, say as follows:

1. That this Court is without jurisdiction to entertain this action for the reason that it is not an actual case or controversy in that there is no real controversy between the People of the State of Illinois, petitioners herein, and the respondents, John W. Lewis, Jr., William J. Scott, Richard B. Ogilvie, Alan J. Dixon, Michael J. Howlett, James A. Ronan and Victor L. Smith, by virtue of their

individual capacities and as members of the Illinois State Electoral Board. That said named respondents have taken no action to indicate that the purported redistricting plan submitted to the Secretary of State on August 7, 1971 is invalid and illegal in any sense. That the action of the Attorney General in federal actions concerning the subject matter of this dispute since and prior to August 27, 1971 has in all respects been to defend the constitutionality and validity of the purported redistricting. That the respondent municipalities and the other named individual respondents herein have no official function or duty with respect to the promulgation of the redistricting plan, the publishing of the redistricting plan or the conduct of any election for members of the General Assembly of the State of Illinois. That the municipalities and individual respondents represented by this answer have no official functions in connection with said redistricting plan and therefore are not involved in any controversy with the People of the State of Illinois.

This this petition for declaratory judgment is a mere subterfuge by which the relators seek to secure an advisory opinion from this Court. That under the provisions of Article 4 of the Constitution of the State of Illinois, this Court has judicial powers and is not vested by the Constitution or laws of this State with any authority to grant advisory opinions. That Section 3 of Article 4 of the Constitution of the State of Illinois provides that this Court shall have original and exclusive jurisdiction over actions concerning redistricting which shall be initiated in the name of the people by the Attorney General That the sole purpose and function of that power is to enable the Attorney General to commence proceedings in which an actual controversy exists. That no controversy exists between the People of the State of Illinois or the Attorney General and the respondents as Secretary of State, Attorney General and State Electoral Board.

2. In answer to paragraph 2 of said petition, respondents admit that under Section 3 of said Article 4, the 77th General Assembly is required to redistrict the House and Senate prior to June 30, 1971. Respondents aver that when the General Assembly so failed, a purported legislative redistricting commission was appointed in an effort to comply with the requirements of said Section 3 of Article 4, but deny that the constitutional redistricting commission prescribed by Section 3(b) was properly constituted prior to July 10, 1971. Respondents aver that on July 1, 1971, Cecil A. Partee, President Pro Tempore of the Illinois Senate, having power to appoint one Illinois Senator and one non-member of the General Assembly to said commission, appointed himself to the commission and appointed Mr. Douglas Kane, his employee as a legislative aid, as a member of said commission. Respondents further aver that Mr. W. Robert Blair, Speaker of the Illinois House of Representatives, appointed himself as a member of the commission, and Mr. C. Douglas Donnenfeld, his employee and legislative aid, as a non-member of the General Assembly, a member of the commission. Mr. Clyde L. Choate, Minority Leader of the Illinois House of Representatives, appointed himself as a member of the commission and Mr. Herman Bodewes, his legislative aid and employee, as a non-assembly member of the commission.

Respondents further aver that the appointment of themselves by Messrs. Partee, Blair and Choate was invalid and void ab initio, and the appointment of Messrs. Kane, Donnenfeld and Bodewes, who were legislative assistants and employees of the General Assembly, was void and invalid ab initio. That there was never a validly appointed redistricting commission established pursuant to the provisions of Article 4, Section 3(b) of the Illinois Constitution.

Respondents admit that, prior to August 10, 1971, to wit: August 7, 1971, the purported commission filed with the Secretary of State a purported redistricting plan purportedly approved by at least five members. Respondents aver that said purported redistricting plan was void and invalid for the reason that it was not prepared by a valid redistricting commission; that it provided for districts which were not equal in population; that said plan did not consist of compact and contiguous districts as required by the Constitution of the State of Illinois; and that said proposed districts did not give consideration to traditional and existing political boundary lines.

Respondents deny that the plan so filed is presumed valid for the reason that, on its face and in the manner in which said commission was appointed, said plan was invalid and denies that said plan was required to be published promptly by the Secretary of State for the reason that the Secretary of State is not bound to give any effect to invalid, unlawful and unconstitutional acts of a purported redistricting commission, the majority of whose membership was invalidly appointed.

Respondents deny that the legislative districts in the purported plan filed with the Secretary of State are constitutionally presumed to be compact, contiguous and substantially equal in population, and deny that the Constitution requires any such presumption.

3. In answer to paragraph 3 of said petition, respondents admit that certain cases were filed in the United States District Court for the Northern District of Illinois, but respondents say they were not served with copies of Exhibits A through E and so therefore cannot plead with respect to the accuracy of said purported exhibits. Respondents admit that the allegations of the relief sought are substantially correct but say that if Exhibits A through

E are in fact correct and true copies of the complaints, then said exhibits speak for themselves.

4. In answer to paragraph 4 of said petition, respondents admit that the respondent officers are named as defendants in the pending Federal Court suits and admit that the Illinois Electoral Board is responsible for certain stages of Illinois election procedures. Respondents admit that the Secretary of State has the duty to receive and file a legislative redistricting plan and to publish it promptly, but deny that the Secretary of State has any authority to receive and publish a purported redistricting plan which is void ad initio.

Respondents deny that the Attorney General has the duty to invoke this Court's original and exclusive jurisdiction when any action is instituted concerning redistricting by initiating an original proceeding in the name of the People of the State.

5. In answer to paragraph 5 of said petition, respondents admit that certain respondents as named herein are municipalities, their governing officers, certain political officers, and individual taxpayers, residents and electors of the named municipalities and the State of Illinois. That the interests of the individual named respondents who are plaintiffs in the federal suits are those of electors whose constitutional rights would be impinged and frustrated if the purported redistricting plan should be permitted to be the basis of any election for members of the General Assembly.

Respondents deny that the municipalities object to the geographic boundaries of the new legislative districts because they do not conform to their municipal boundaries, but say that the new purported legislative districts ignore traditional political boundaries, and said districts are constructed in such a manner as to prevent persons with a

community of interest by reason of residence in the various municipalities to express their preference for members of the General Assembly.

Respondents admit the approximate populations as set forth in paragraph 5, but aver that the boundaries of the districts were drawn in such a manner as to substantially dilute the ability of persons residing within said districts from expressing their common interests by their votes for members of the General Assembly.

6. In answer to paragraph 6 of said petition, respondents deny that the redistricting plan approved by the purported redistricting commission constitutes a duly enacted law and denies that it should be presumed valid. Respondents deny that said redistricting plan is presumptively compact, contiguous and substantially equal in population, and deny that the plan meets the only state and federal constitutional standards required. Respondents aver that District No. 1, which includes portions of the City of Evanston and the Village of Arlington Heights extends from Lake Michigan on the east to the west line of Wheeling Township on the west and to the Cook County line on the north; that said district totally bisects Evanston Township which is coterminous with the City of Evanston. That said district includes portions of Evanston Township, New Trier Township, Northfield Township and Wheeling Township, and all or a portion of the Villages of Wilmette, Kenilworth, Glencoe, Northbrook, Northfield, Glenview, Wheeling, Arlington Heights and Buffalo Grove. That the lines of said district totally and completely ignore existing communities of interest and existing political boundaries. Its configuration is attenuated, irregular, illogical and outrageous. It is neither a compact nor contiguous district within the meaning of the Constitution of the State of Illinois. It is not substantially equal in population to other

districts created by said purported redistricting commission. That all of the remaining portions of the City of Evanston are included in the so-called Eleventh District, a substantial majority of whose population resides within the City of Chicago. Said district totally ignores existing political boundary lines of the City of Evanston and the City of Chicago and the existing political boundary line of Evanston Township. Said district is neither compact nor contiguous, nor is its population substantially equal to other districts created by said purported commission.

That by virtue of the manner in which the districts were drawn, these respondents and all persons similarly situated in the City of Evanston and the State of Illinois are denied due process and equal protection of the laws in a manner contrary to the Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of Illinois.

That attached hereto and made part of this answer as Exhibit A is a map showing the approximate boundaries of the First, Second, Third, Fourth and Eleventh Districts, containing portions of the City of Evanston. That said map on its face demonstrates that said districts are not compact or contiguous.

That attached hereto and made part of this answer as Exhibit B is a computation of the population of Districts No. 1, 2, 3, 4 and 11, showing wherein there is a substantial variation in the population of said districts, including a deviation of as much as 40,000 persons.

That the Village of Arlington Heights is divided into four legislative districts, and most of its population is located in three districts. These districts have been designated as proposed Districts No. 1, 2 and 3. An additional portion of the Village is located in a Lake County district. In order to effectively diminish the power of citizens of

Arlington Heights to elect representatives of their choice to the General Assembly, these three odd-shaped and gerrymandered districts were created. That, according to figures adduced by the Census Bureau, District No. 3 contains 224,363 persons. Therefore, the citizens of that district have their voting rights substantially diluted as compared with other districts in the State.

7. In answer to paragraph 7 of said petition, respondents deny that conditional and narrowly defined legislative power was vested in the commission, and aver that granting to the commission such purported power was an unlawful delegation of legislative power. Respondents further aver that this Court has authority to examine a claim of denial of a Republican Form of Government under Section 4 of Article 4 of the Constitution of the United States.

8. In answer to paragraph 8 of said petition, respondents deny that the federal claims focus on representation afforded after an election, and deny that the claims do not involve the rights of voters to vote. Respondents aver that the claims in the Federal Court are based upon the denial of constitutional rights to an election held pursuant to equal protection of the laws and as guaranteed by the Federal Constitution which includes the right to have all requirements of the State Constitution with respect to redistricting complied with in all respects.

9. In answer to paragraph 9 of said petition, respondents deny that neither the State nor the Federal Constitutions recognize any rights in a municipality. Respondents aver that municipalities under federal law are persons entitled to the protection of the Fourteenth Amendment. Respondents further aver that any acts in violation of the constitutional requirements of equality in population and compact and contiguous legislative districts are totally void and invalid, and the respondents municipalities are entitled to attack said proposed districts.

That the rights of municipalities under the Constitution of 1970 and particularly the home rule municipalities of Evanston and Arlington Heights stem directly from the Constitution and not from the legislature. That the redistricting proposal moreover is not the work of the legislature and neither law nor public policy prevents home rule municipalities such as Arlington Heights and Evanston from litigating questions respecting the composition of the General Assembly or the propriety of purported legislative districts.

Respondents further aver that the municipality has a right to the election of members of the General Assembly from districts which recognize a community of interest among citizens of the municipality and from districts which recognize traditional and existing political boundary lines.

10. In answer to paragraph 10 of said petition, respondents admit that a three judge court has been impaneled to hear the five federal suits and that said hearing will not be held until after November 4, 1971. Respondents however deny that chaos could result unless the federal proceedings are stayed. Respondents further aver that the judges of the Federal Court assigned to hear this matter are not parties to this suit and this proceeding is not an attempt in any manner to stay the federal proceedings. Respondents further deny that federal abstention is entirely dependent upon this Court exercising its jurisdiction.

11. In answer to paragraph 11 of said petition, respondents deny that the claims of the respondents in the Federal Court are highly abstract, hypothetical and without merit, but aver that all such claims are well founded in law and such claims should be heard and considered in any determination by any court of competent jurisdiction of the issues herein, and respondents assert and reallege all claims set forth in the Federal Court as if the same were set forth haec verba in this answer. Respondents further

aver that this Court should conclude that the redistricting plan is invalid and, if it determines that it has jurisdiction of this cause, should enter a declaratory judgment finding that said purported redistricting plan is contrary to the Federal and State constitutional standards and is invalid and void.

12. As further and affirmative defenses, the respondents say as follows:

(a) That the individual respondents herein are electors of the Village of Arlington Heights and the City of Evanston in Cook County, Illinois, and are entitled to vote in elections for members of the Illinois General Assembly. That, as such, they are entitled to vote in districts which are equal in population and are compact and contiguous, and which take into account traditional and existing political boundary lines.

(b) That the proposed redistricting plan submitted by the purported redistricting commission is invalid and unconstitutional for the following specific reasons:

(1) That, as set forth in Exhibit B, the districts are unequal in population;

(2) That said districts are not compact and contiguous but are instead irregular, illogical and gerrymandered;

(3) That said districts do not take into consideration traditional and existing political boundary lines.

(c) That the purported redistricting commission and its plan were void ab initio for the reasons that:

(1) A majority of said commission consisted of self appointments by the appointing officers and the appointment of employees of the appointing officers who were in turn employees of the General Assembly. That the Constitution does not contemplate self appointment,

but does contemplate the appointment of at least four members of the general public who are not related in any manner to the General Assembly. That said redistricting commission was therefore invalidly and illegally constituted and the appointment of six of its members was void ab initio. That the purported plan submitted by said redistricting commission was thereby void ab initio.

(2) That Section 3 of Article 4 of the Illinois Constitution, insofar as it does not provide for representation of citizens who are independent voters and not members of any established political party, denies to such independent voters equal protection of the laws in violation of the Constitution of the United States and of the State of Illinois.

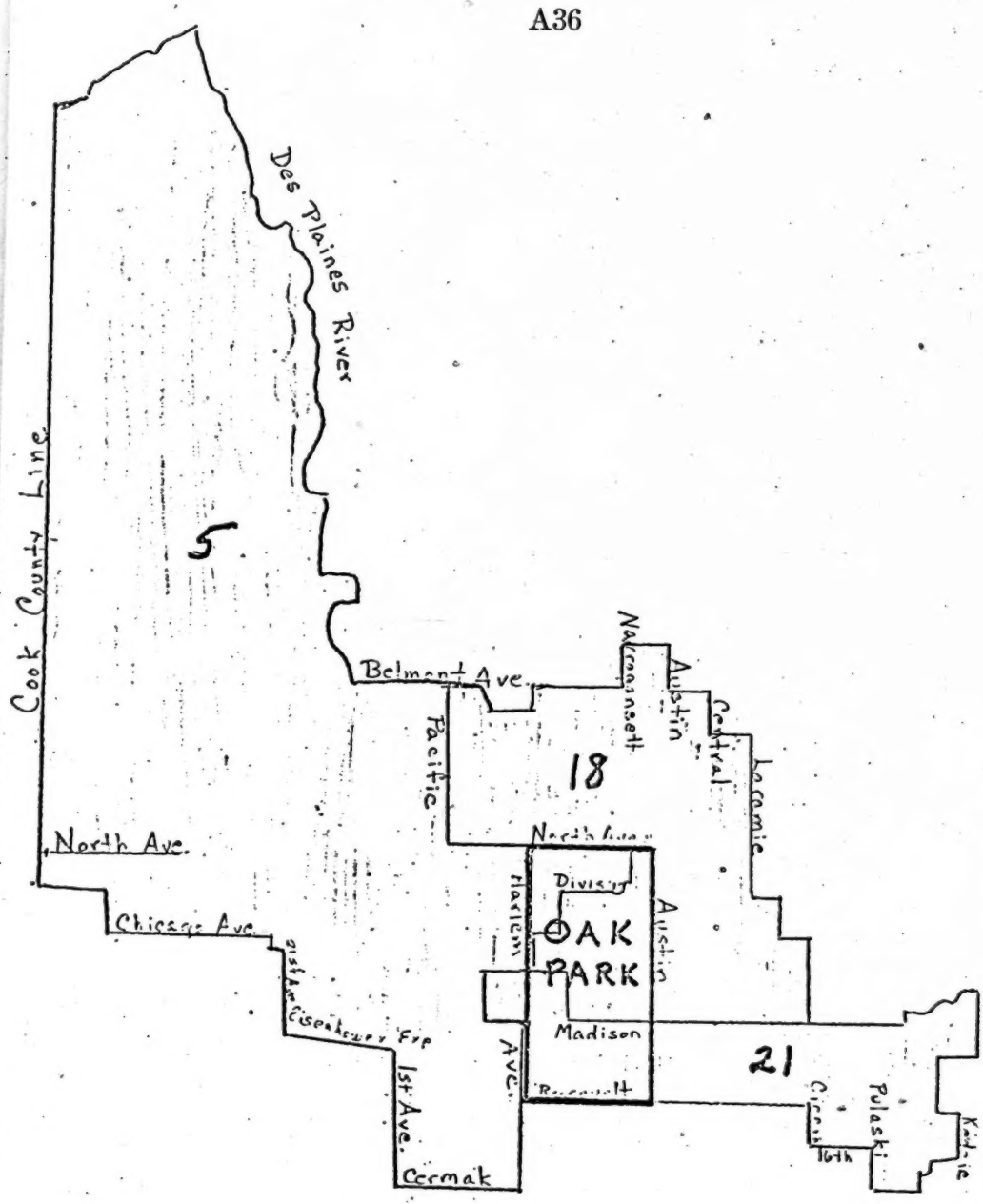
WHEREFORE, respondents respectfully pray that this Court dismiss the petition for declaratory judgment heretofore filed herein or, in the alternative, enter a declaration that the purported redistricting plan filed on August 7, 1971 is unconstitutional and void and that this Court issue such orders as may be deemed necessary to prevent the holding of any elections for the General Assembly under said purported redistricting plan and further enter such other orders as it may deem meet.

Respectfully submitted,

VILLAGE OF ARLINGTON HEIGHTS, et al.
and CITY OF EVANSTON, et al.,
Respondents,

By .....
Their Attorney.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
263-5195.



DIVISION OF VILLAGE OF OAK PARK INTO THREE LEGISLATIVE DISTRICTS
Exhibit Attached to Answer of Village of Oak Park.

APPENDIX D.

ANSWER TO MOTION FOR LEAVE TO FILE AN ORIGINAL PROCEEDING CONCERNING RE-DISTRICTING THE HOUSE AND SENATE UNDER SECTION 3(b) OF ARTICLE IV OF THE 1970 CONSTITUTION OF ILLINOIS.

Respondents, Village of Oak Park, a municipal corporation, John J. Gearen, Cyril A. Farwell, Jr., J. B. Thomas, Harold W. Herman, Thomas F. Sturr, Clifford T. Osborn, and Theodore J. Krasnow, for answer to said Motion, allege as follows:

1. These Respondents deny that Petitioners are entitled to the relief requested in paragraph 1 of their Motion.

2. These Respondents admit the allegations of paragraph 2 of the Motion. These Respondents affirmatively allege that the language in Section 3(b) of Article IV of the Constitution of the State of Illinois refers to exclusive jurisdiction over inferior state courts of Illinois and was not intended nor could it supersede the jurisdiction of the United States District Court over questions of federal due process and federal equal protection of the laws.

3. These Respondents affirmatively allege that there is no allegation in our Complaint in the United States District Court stating that the Attorney General has failed to act. No such allegation is necessary to give the federal court jurisdiction.

4. These Respondents deny that the jurisdiction of the Supreme Court of Illinois supersedes that of the United States District Court, which has assumed jurisdiction over this matter. These Respondents affirmatively allege that two (2) actions to consider this question will result in ultimate chaos.

5. These Respondents deny that their case, now pend-

ing in the United States District Court, can be stayed by action of this Court.

6. These Respondents affirmatively allege that the question of compactness and contiguity of legislative districts is a federal constitutional question within the jurisdiction of the United States District Court, as well as a state question under the Constitution of the State of Illinois.

7. These Respondents affirmatively allege that it is grave public importance to the people of the State of Illinois that the United States District Court proceed promptly with a decision on the questions of federal due process and federal equal protection pending before said Court.

8. These Respondents allege that it is within the discretion of this Court to refuse to entertain this Petition.

9. These Respondents allege that there are complicated questions of fact involved in their allegations in the United States District Court and in the allegations presented by the Petition and Answer thereto in this Court. Rule 381 of this Court provides that only issues of law will be considered in original actions filed in the Supreme Court.

WHEREFORE, these Respondents respectfully pray that this Court reconsider its Ex Parte Order granting Petitioners leave to file their Petition for Declaratory Judgment and deny the request for leave to file the Petition.

VILLAGE OF OAK PARK, a municipal corporation, JOHN J. GEAREN, CYRIL A. FARWELL, JR., J. B. THOMAS, HAROLD W. HERMAN, THOMAS F. STURR, CLIFFORD T. OSBORN and THEODORE J. KRASNOW.

By: .....
ARTHUR C. THORPE,
Their Attorney.

ARTHUR C. THORPE,
Attorney for Certain Respondents,
111 West Washington Street,
Chicago, Illinois 60602,
FInancial 6-9740.

APPENDIX E.

ANSWER TO PETITION FOR DECLARATORY JUDGMENT.

Respondents, Village of Oak Park, a municipal corporation, John J. Gearen, Cyril A. Farwell, Jr., J. B. Thomas, Harold W. Herman, Thomas F. Sturr, Clifford T. Osborn, and Theodore J. Krasnow, for answer to the Petition for Declaratory Judgment of Petitioners, allege as follows:

1. These Respondents affirmatively allege that Section 3(b) of Article IV of the Constitution of Illinois confers exclusive jurisdiction on the Supreme Court of Illinois over all inferior courts of the State of Illinois. Said provision was not intended to nor can it deprive the United States District Court of jurisdiction over federal due process and equal protection questions.

2. These Respondents affirmatively allege that our legislative remap, as alleged in paragraph 2 of the Complaint, is invalid for the following reasons:

(a) Legislative powers were delegated to the Electoral Commission without any of the required administrative standards.

(b) The reapportionment map is improper as to Oak Park because it fails to consider traditional political boundaries.

(c) The reapportionment map is improper as to Oak Park because it is not compact and contiguous.

(d) The reapportionment map is improper because it violates the "one-man-one-vote" rule.

(e) The reapportionment map is improper because it has been drawn with the sole purpose of conserving some existing seats in the legislature.

(f) The members of said commission were appointed by themselves.

(g) The members of said commission represented some legislative districts in the State of Illinois, but not the district including the Village of Oak Park.

A map showing the effect of the legislative redistricting on the Village of Oak Park is attached to this Answer as Exhibit A and made a part hereof.

3. These Respondents admit the allegations of paragraph 3.

4. These Respondents deny that the Attorney General has the duty to invoke this Court's jurisdiction once the United States District Court has assumed jurisdiction.

5. These Respondents deny that they have filed a Complaint in the United States District Court because legislative boundaries do not conform exactly to its municipal boundaries. Said suit was filed for the reasons set forth in paragraph 2 of this Answer and for the reasons that the traditional political boundaries were not considered as required by federal due process and federal equal protection of the laws and, in the alternative, that the boundaries of the Village of Oak Park were intentionally emasculated by a commission on which the Village of Oak Park or the people included within its boundaries had no representation.

6. The provision of Article IV of Section 3 of the Illinois Constitution that states the redistricting plan shall be presumed valid, is the same section that is challenged

in the United States District Court as being void and in violation of federal due process and federal equal protection of the laws. In any event, the presumption of validity does not preclude judicial inquiry and is not conclusive.

7. The legislative power vested in the commission without standards is an invalid delegation of legislative power in violation of both federal due process and federal equal protection and is in violation of Article IV, Section 1 of the Illinois Constitution, which provides that the legislative power is vested in the General Assembly. At the very least, the citizens of Oak Park and other citizens similarly situated, were entitled to an administrative standard regarding traditional and historical political boundaries.

8. These Respondents affirmatively allege that legislative districts, which are improperly drawn, are subject to attack in the United States District Court on the question of federal due process and federal equal protection of the laws and it is not necessary to wait until an election is over.

9. These Respondents affirmatively allege that they do not claim any right to the election of one of its residents. Respondents claim the right to compact and contiguous districts and the right to have political historical boundaries considered and the right to have the commission considering said boundaries representative of the people of the State of Illinois as a whole rather than representative of specific special interests.

10. These Respondents deny that chaos will result from the Federal Court action. These Respondents allege that chaos will result from the filing of actions in two independent courts involving the same questions and the same parties.

11. These Respondents deny that the claims in the Federal Court are abstract, hypothetical or patently without merit. These Respondents deny that this Court should conclude that the redistricting plan is valid.

ADDITIONAL AFFIRMATIVE ALLEGATIONS.

1. These Respondents allege that there are complicated questions of fact involved in their allegations in the United States District Court and in the allegations presented by the Petition and Answer thereto in this Court. Rule 381 of this Court provides that only issues of law will be considered in original actions filed in the Supreme Court.

2. These Respondents reallege, as affirmative allegations, the allegations of their Complaint entitled "Village of Oak Park, et al., v. John W. Lewis, et al.", No. 71 C 2245, in the United States District Court for the Northern District of Illinois, Eastern Division, which Complaint has been attached as an exhibit to the Petition for Declaratory Judgment filed herein.

3. In the complex urban area of Chicago and the western suburbs, the problems of the Village of Oak Park are identified with the problems of Chicago—Austin area and with the problems of the suburban area to the immediate west. In spite of this fact, an Oak Park resident on the north side of Chicago Avenue finds himself in a legislative district with the extreme northwest area of Cook County, some ten miles away. A resident in Oak Park's Lake Street area, some four blocks away, finds himself in a legislative district that extends to Kedzie and Cermak in the City of Chicago some six miles away. The community of interest that exists with Oak Park and its neighbors

in Austin, Forest Park, River Forest and Elmwood Park, has been sacrificed to partisan gerrymandering in violation of the compact and contiguous requirement of the Illinois Constitution.

VILLAGE OF OAK PARK, a municipal corporation, JOHN J. GEAREN, CYRIL A. FARWELL, JR., J. B. THOMAS, HAROLD W. HERMAN, THOMAS F. STURR, CLIFFORD T. OSBORN and THEODORE J. KRASNOW.

By: /s/ ARTHUR C. THORPE,
ARTHUR C. THORPE,
Their Attorney.

ARTHUR C. THORPE,
Attorney for Certain Respondents,
111 West Washington Street,
Chicago, Illinois 60602,
FInancial 6-9740.

MAP IS TOO LARGE TO BE FILMED.

APPENDIX F.

ANSWER TO PETITION FOR DECLARATORY JUDGMENT.

John A. Grivetti, hereinafter called respondent, hereby answers the *Petition for Declaratory Judgment and all Writs Necessary and Appropriate to Effectuate Jurisdiction,* and represents unto this honorable court as follows:

1. Respondent denies that the Illinois Constitution, Article IV, Section 3(b), provides jurisdiction for this court to consider Petitioners' Motions, in that the state constitution cannot in any way be construed to prevent the Federal courts from exercising jurisdiction over cases involving rights guaranteed to persons under the Federal Constitution.

2. Respondent admits that the Illinois Legislature failed to enact a redistricting plan by June 30, 1971, and further admits that a purported Redistricting Commission was appointed, but Respondent denies that said Commission was validly constituted. Respondent admits that said Commission adopted a proposed remap of the Illinois Legislative districts, but denies that said remap is valid or presumed so. Respondent affirmatively alleges that the proposed districts are not compact, contiguous, or substantially equal in population, and further alleges that even a presumption of validity cannot prevent the courts from examining the proposed district map to determine if it is in fact valid under the Constitutions of the United States and the State of Illinois.

3. Respondent admits that certain cases have been filed in the United States District Court for the Northern District of Illinois, Eastern Division, but has not received cop-

ies of Petitioners' Exhibits A through E so that respondent cannot aver as to their contents or accuracy. The Petition filed by Respondent in said Federal Court is attached hereto as Exhibit A.

4. Respondent admits the allegations of Paragraph 4 of the Petition, except that Respondent denies that the Attorney General "has the *duty* to invoke this Court's original and exclusive jurisdiction when any action is instituted concerning said redistricting by initiating an original proceeding in the name of the People of the State". Respondent alleges that Section 3(b) of Article 4 of the Constitution is in no way mandatory, and allows the Attorney General to use his discretion as to when an action should be brought to this Court.

5. Respondent makes no answer to Paragraph 5, except that Respondent alleges that his complaint, attached hereto, which is currently before the Federal District Court, contains allegations of substantial issues for that court to consider.

6. Respondent denies that a "presumption of validity" can insure that the proposed remap "meets the only State and Federal Constitutional standards required".

7. Respondent denies the allegations of Paragraph 7.

8. Respondent alleges that the federal claims are based upon the requirement that all persons should have an equal voice in the *selection* of their elected representatives. The only method by which the courts can insure that each citizen enjoys this right is to require that legislative districts meet certain constitutional standards. Respondent's federal claims are in no way based upon a hypothetical "representation after an election", but focus on insuring that the election to determine this representation is conducted from a proper basis.

9. Respondent denies the allegations of paragraph 9.

10. Respondent admits that the federal suits have required the convening of a three-judge panel, but denies that chaos will result unless its proceedings are stayed. Petitioners own allegations state that candidates' petitions under this map cannot be filed until December 13, 1971, and in fact candidates, under Illinois law, have until December 20, 1971 to file such petitions. Petitioners reference to November 4 is irrelevant, as said date has no bearing on any proceedings. The Federal District Court panel has ample time to consider the suits before it, which have been consolidated for hearing, and can easily effect a remedy before petitions are due from candidates. In no way can it be said that "federal abstention is entirely dependent upon this Court exercising its jurisdiction." The federal court clearly has the jurisdiction to consider claims based upon the federal Constitution, and can exercise its jurisdiction regardless of what is done in a state court.

11. Respondent denies that claims in the federal court are "highly abstract, hypothetical and patently without merit", and alleges that the sufficiency of those claims is best determined by the court in which they were filed, and in which proceedings have begun.

WHEREFORE, Respondent prays that the Petition for Declaratory judgment be dismissed as having failed to state a claim upon which relief can be granted, and that the Court make no further findings in this matter.

JOHN A. GRIVETTI, JR.,
Respondent.

COMPLAINT.

The plaintiff alleges:

1. Jurisdiction is founded on the existence of a federal question. The action arises under the Fourteenth Amendment to the Constitution of the United States.

2. This action is brought as a class action by the plaintiff as a resident of the State of Illinois, on behalf of all other residents of the state, as provided in Rule 23, Federal Rules of Civil Procedure. The class is so numerous as to preclude the joinder of all parties, there are common questions of law and fact affecting members, the claim of the representative party is typical of the claim of the entire class, and the representative party will fairly and adequately protect the interests of the class. A class action is superior to other means for the fair and efficient adjudication of the controversy.

3. On August 7, 1971, the Illinois Reapportionment Commission created pursuant to the Illinois Constitution of 1970 (Article 4, Section 3) approved a plan to reapportion the legislative districts of the State of Illinois. Under said Illinois Constitution and applicable statutes defendants are charged with the responsibility for administering all elections in the State of Illinois, including the elections for legislative office in the districts as drawn in the above noted remap.

4. Said remap of August 7, 1971 is violative of the Constitution of the United States (Amendment 14) and fails to comply with applicable decisions of the Supreme Court. It contains districts which are not compact, contiguous, or representative of a genuine community of interest. Certain districts contained in said remap are grossly misshapen and appear to be classic cases of gerrymandering.

5. In addition, districts are drawn without proper consideration of traditional political boundaries, which lack of consideration works to deprive residents of such traditional areas of due process and equal protection of law.

6. It is entirely possible to equitably reapportion the state in a manner which will result in districts which are not only equal in population but also are compact, contiguous, representative of a genuine community of interest, and in greater conformity with traditional political boundaries, all of which criteria are germane under applicable decisions of the Supreme Court.

WHEREFORE, Plaintiff demands:

1. That the reapportionment adopted August 7, 1971 by the Illinois Reapportionment Commission be declared unconstitutional;

2. That the defendant be prohibited from holding any election, or proceedings preliminary to an election, based on the said reapportionment.

3. That the court establish a panel of three judges to equitably reapportionment the legislative districts of Illinois, and that the public be invited to submit proposed maps for consideration by this panel.

JOHN A. GRIVETTI, JR.,
Plaintiff.

JOHN A. GRIVETTI, JR.,
Attorney-at-Law,
811 Peoria Street,
Peru, Illinois 61354,
(815) 224-2389.

APPENDIX G.

MOTION.

Now come the City of Evanston, et al., and the Village of Arlington Heights, et al., respondents herein, by Jack M. Siegel, their attorney, the Village of Oak Park, et al., respondents herein, by Arthur C. Thorpe, their attorney, and John A. Grivetti, pro se, and move this Honorable Court to direct the attempted intervenor, Legislative Redistricting Commission, to file with this Court copies of population figures for each legislative district utilized in the purported redistricting plan, including census figures for each census tract, said figures to be certified by the Census Bureau, and to file the official redistricting map as finally submitted, and further direct that copies of said map and certified population figures be supplied to all respondents; that there be supplied to the respondents copies of any computer data heretofore submitted to this Court relating to the purported redistricting by the Legislative Redistricting Commission.

Respondents further move that this Honorable Court hold a hearing on the accuracy of said figures and map and require the presence at said hearing of those persons charged with tabulating the population figures and drawing the redistricting map.

Respondents further move that this Honorable Court redraw said redistricting map in accordance with the requirements of the Constitution of the United States and the Constitution of the State of Illinois or, in the alternative, direct that the election of members of the General Assembly be held at large until a redistricting plan and map is produced which meets the constitutional requirements of the State and Federal Constitutions.

Respondents further move that the so-called Legislative Redistricting Commission, heretofore purportedly created, be restrained and prohibited from making any changes, additions or corrections to the purported redistricting plan, and that all such changes made after August 10, 1971 be held invalid.

In the alternative, respondents respectfully pray that this Court enter an order finding the redistricting plan to be invalid and void and that this Honorable Court redraw said redistricting map in accordance with the requirements of the Constitution of the United States and the Constitution of the State of Illinois or, in the alternative, direct that the election of members of the General Assembly be held at large until a redistricting plan and map is produced which meets the constitutional requirements of the State and Federal Constitutions.

CITY OF EVANSTON, et al., VILLAGE OF ARLINGTON HEIGHTS, et al., VILLAGE OF OAK PARK, et al., and JOHN A. GRIVETTI,

Respondents.

By .....

Their Attorneys.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
263-5195,

ARTHUR C. THORPE,
111 West Washington Street,
Chicago, Illinois 60602,

JOHN A. GRIVETTI, JR.,
811 Peoria Street,
Peru, Illinois 61354.

SUGGESTIONS IN SUPPORT OF MOTION.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

Jack M. Siegel, being first duly sworn on oath, deposes and says as follows:

1. That he is the attorney for the Village of Arlington Heights, and certain individual respondents who are also Village officials of the Village of Arlington Heights; he is also the attorney for the City of Evanston, respondent, and certain individuals who are the Mayor and City Council of the City of Evanston, and the Democratic and Republican Committeemen of Evanston Township.

2. That he represented the respondents at a hearing before this Honorable Court on November 9, 1971. That at such hearing, attorney Jerome H. Torshen appeared and attempted to intervene on behalf of the Illinois Legislative Redistricting Commission. That his motion was taken by this Court at said hearing.

3. That subsequent to that date, to-wit: November 12, 1971, Mr. Torshen appeared at a hearing before a three judge federal panel in Chicago in consolidated case numbers 71 C 1955, 71 C 2056, 71 C 2203, 71 C 2245, 71 C 2392 and 71 C 2497. That at said hearing he presented to the federal three judge panel a purported redistricting map and purported figures representing population of the various districts. That subsequent to that date the Secretary of State of Illinois issued another set of maps to the various county clerks purporting to show the legislative districts. Subsequent thereto, to-wit: November 17, 1971, there was filed in the office of Secretary of State a purported list of population figures for the legislative districts. That subsequent thereto, to-wit: November 23, 1971,

the said Jerome Torshen as attorney for the purported Illinois Legislative Redistricting Commission appeared in the Federal Court in the cases herein referred to and advised the Court that the maps previously submitted and the maps circulated by the Secretary of State were in fact in error and that the Highway Department had prepared certain maps which he represented as being true maps. That at said hearing he also represented that certain computer data was in the hands of this Court. That the affiant and other counsel for the respondents had not been given an opportunity to review said maps which were produced after the hearing before this Court and had no knowledge of any computer data which, according to Mr. Torshen, was in the hands of this Court.

4. That in view of the fact that the Secretary of State has withdrawn certain maps, that the Highway Department has apparently drawn another map, that another set of maps was presented to the Federal Court, that changes have been made in the boundaries of the various legislative districts, and that apparently computer data is available although the exact scope of such data and its relationship to the various maps is not known to the affiant, it is respectfully submitted that this Court ought to conduct a full hearing on all population figures, maps and computer data in an effort to ascertain whether the purported redistricting plan complies with all requirements of the Federal and State Constitutions.

5. That under the terms of the Illinois Constitution, the redistricting commission performed its final function with the submittal of its plan to the Secretary of State on August 7, 1971, and all purported changes, additions or deletions subsequently made are invalid and have no force of law.

6. That the matters alleged herein have come to the attention of the affiant subsequent to the hearing before

this Court, and that no determination by this Court should be made until all the facts and legal issues herein have been fully and completely heard.

.....

Subscribed and sworn to before me this 23rd day of November, 1971.

.....

Notary Public.

MAP IS TOO LARGE TO BE FILMED.